

# Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic

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“He who dares to teach, must never cease to learn.”<sup>1</sup>

“Engaging in public dialogue about Difference . . . requires practice because we so often can, and do, get things wrong.”<sup>2</sup>

## INTRODUCTION

The University of New Mexico Clinical Law Program serves Native Americans of many tribes and pueblos,<sup>3</sup> Latinos of many

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1. John Cotton Dana.

2. Margaret E. Montoya, Comment, *Voicing Differences*, 4 CLINICAL L. REV. 147, 152 (1997).

3. New Mexico is home to 173,483 Indian residents, nearly 11 percent of the state’s population. “There are twenty-two Indian tribes in New Mexico: nineteen Pueblos, two Apache tribes (Jicarilla Apache and Mescalero Apache), the Navajo Nation, and a large urban Indian population.” NEW MEXICO PUBLIC EDUCATION DEP’T, TRIBAL-STATE INDIAN EDUCATION SUMMIT REPORT 4 (June 26, 2006).

backgrounds,<sup>4</sup> African Americans of diverse heritage, whites of various backgrounds, and immigrants from numerous countries. Sixteen law school faculty members (out of thirty-three) are members of under-represented groups and over 40 percent of our students are students of color.<sup>5</sup> Many of our clients bring a cultural context to the representation that may not be familiar to the student.<sup>6</sup> In addition, sometimes the client's cultural context may have caused some of the legal difficulty for the client.<sup>7</sup> Our clinic,<sup>8</sup> which is a law school graduation requirement, is thus a fertile environment in which to teach and learn about cultural context (knowledge about culture),<sup>9</sup> cultural self-awareness, and the skills involved in intercultural communication. Also, students learn about the ways in which these issues affect representation of clients.

Cultural knowledge, awareness, and skills can be taught and learned in a clinical program using a variety of methods, including research, reading, roleplay, case rounds, observation, and group discussion.<sup>10</sup> Effective supervision sessions can offer a very powerful

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4. Latinos in the United States are not a homogenous cultural and social grouping. *See, e.g.,* LATINOS IN THE UNITED STATES, 1 HISTORICAL THEMES AND IDENTITY: MESTIZAJE AND LABELS (Antoinette Sedillo López ed., 1995).

5. ABA-LSAC OFFICIAL GUIDE TO ABA APPROVED LAW SCHOOLS (Wendy Margolis et al. eds., 2007). Our faculty includes nine Latino/as (four male, five female), two African Americans (one male, one female), three Native Americans (one male, two female) and two Asian Americans (one male, one female). Of course, our diversity does not obviate the need for training in cultural context and communication. Indeed, it compels it.

6. In discussing cross-cultural aspects of lawyering, I focus on differences between individuals that may or may not include race, but that affect communication and perception. *See* Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 220 n.8 (2002) (distinguishing "culture" as it is used in anthropology from "cultural competence" which involves differences between individuals that can affect communication).

7. *See* vignettes, *infra* Part III.

8. Most use the term "live client clinic" to describe clinics that serve clients as part of their mission. The mission statement of UNM's Clinical Law program is "learning and teaching through service." The term "client-service clinic" focuses on the service aspect of representation, not the mere fact of the existence of the client.

9. By cultural context, I mean the client's circumstances that affect his/her life choices and decision-making. For example, it is part of Navajo culture to avoid speaking about death. This knowledge might affect how wills are approached for Navajo people who retain that cultural norm.

10. We have used many of these formats in our sessions on cultural competence. We rotate responsibility for presenting lectures on these topics among faculty who teach in the

method of engaging the student in learning about the client's cultural context, developing self-awareness, and improving communication skills. Sometimes, commentators describe this as "dealing with difference."<sup>11</sup> The American Bar Association Standing Committee on Legal Aid and Indigent Defendants has articulated "cultural competence" as one of its standards for providing legal services to the poor.<sup>12</sup> Thus, it is important for clinics to consider these issues as part of their educational program. Addressing these issues as part of lawyering skills is a process which requires lifelong study and practice. As supervisors attempt to teach these skills, they also continually learn about them.

This Article begins by offering teaching objectives that can be used to focus supervision and education on effective representation of clients from different cultures as issues arise in the course of representation.<sup>13</sup> Culture is a term used not in the anthropological sense, but rather in the sense of differences between individuals that are related to different backgrounds, value systems, religions, classes, ethnicities, races, or other factors that contribute to a person's experience of the world. Building on the work of Jean Koh Peters, Sue Bryant, Christine Zuni Cruz, Margaret Montoya, Michelle Jacobs, Carwina Weng, Paul Tremblay, Marjorie Silver and others, the learning objectives are described as both "breaking" habits of mind and attitude that inhibit intercultural communication and

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clinic. Professor Christine Zuni Cruz urged us to ensure that white faculty members participate in these sessions so that students and faculty view it as an important practice issue for all.

11. See, e.g., Abbe Smith, *Rosie O'Neill Goes to Law School: The Clinical Education of the Sensitive New Age Public Defender*, 28 HARV. C.R.-C.L.L. REV. 1, 15-37 (1993) (using the phrase "dealing with difference" to describe the students' reactions to the different class, ethnic, and racial contexts they faced in representing accused criminal defendants). "Dealing with difference" is not a phrase much used in the literature anymore. Perhaps it is because we have evolved beyond "toleration of difference" and moved toward understanding and valuing difference.

12. STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID § 2.4 (2006).

13. Identifying and articulating teaching and learning objectives is an important aspect of best practices for law school teaching. See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007); Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807, 813-14 (2007) (describing professional competencies and suggesting focused teaching and objective descriptions in the cognitive, performance and affective domains of learning); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

understanding and “making” habits of thought and skills that enhance intercultural communication and understanding. The learning objectives focus on helping students improve their knowledge about culture and difference, increase their self-awareness about difference, and enhance their practice skills across cultural difference.<sup>14</sup> And, of course, as supervisors teach to the objectives, they also learn.

The Article then discusses the context of student supervision and explains how case supervision sessions can be extremely effective moments during which to pursue those teaching goals. It makes suggestions for the most effective stages of supervision in which to address issues of difference. While cogent supervision normally requires a great deal of planning and forethought, this is especially true when using supervision to enhance students’ cross-cultural understanding and skill level.

The Article next examines vignettes that grew out of cases handled by the University of New Mexico’s Clinical Law Program.<sup>15</sup>

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14. These skills can be said to be either implicit in the MacCrate Report or complementary to the skills identified in the Report. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MacCrate Report], available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>. Our clinic focuses on the MacCrate skills and values including cultural literacy and communication. We tend to use the phrase “cultural literacy” rather than “cultural competence” because, as Professor Christine Zuni Cruz has pointed out to our clinic, no one can ever be truly “culturally competent.” There are too many cultures and too much complexity to ever expect “competence.” We view addressing cultural issues as an aspect of the fundamental values of the profession and though not specifically mentioned in the report, these skills further a notion of effective representation. Several members of our faculty have also been involved in the Best Practices Project sponsored by the Clinical Legal Education Association authored by Roy Stuckey and others. See ROY STUCKEY ET AL., *supra* note 13. The Best Practices Project suggests that law schools use an outcome-based approach to designing the curriculum and evaluating students. It also urges law schools to teach cultural competence. *Id.* at 88–89. This will help ensure that law schools adequately prepare their graduates for the practice of law. *Id.*

Mary Lynch at Albany Law School has created a blog: “1) to create a useful web-based source of information on current reforms in legal education arising from the publication of Roy Stuckey’s *Best Practices for Legal Education* and the Carnegie Foundation’s *Educating Lawyers*; and 2) to create a place where those interested in the future of legal education can freely exchange ideas, concerns, and opinions.” A Place to Discuss Best Practices for Legal Education, <http://bestpracticeslegaled.albanylawblogs.org/> (last visited June 15, 2008).

15. Clients of the UNM Clinical Law Program agree to allow their cases to be used for “educational purposes.” Of course, this agreement does not waive attorney-client confidentiality, so while these vignettes were inspired by real cases, I modified them to disguise the identity of the clients and to illustrate my points about supervision. However, I have tried to

The vignettes identify cultural issues that have come up in the clients' cases and suggest ways that effective supervision might be used to help the student develop cultural context, self-awareness, and intercultural communication skills as part of the clinical supervision experience. This Article seeks to add to the growing literature about the importance of these areas in legal education.<sup>16</sup>

My perspective on these issues has been influenced by the work of my clinical colleagues (past and current), who think about and incorporate these issues in their teaching and practice,<sup>17</sup> my

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describe the cultural and legal issues as closely as possible to the real situations.

16. See, e.g., RACE, CULTURE, PSYCHOLOGY, AND LAW (Kimberly Holt Barrett & William H. George eds., 2005).

17. These colleagues include: Kip Bobroff, Nancy Cook, Barbara Creel, Christine Zuni Cruz, Erik Gerding, Richard Gonzales, Evan Hobbs, April Land, William T. MacPherson, Leslie Mansfield, Nathalie Martin, Jose Martinez, Alfred Mathewson, Margaret Montoya, Jennifer Moore, Paul Nathanson, J. Michael Norwood, Aliza Organick, Sergio Pareja, Nancy Simmons, Carol Suzuki, Rob Schwartz, Andrea Seielstad, Lisa Torracco and Gloria Valencia-Weber. Articles about our clinical program relating to these issues include: Christine Zuni Cruz, *Four Questions on Critical Race Praxis: Lessons from Two Young Lives in Indian Country*, 73 *FORDHAM L. REV.* 2133 (2005) (analyzing the connection between critical race theory and her work in the UNM clinical program, Southwest Indian Law Clinic); Christine Zuni Cruz, *[On the] Road Back in: Community Lawyering in Indigenous Communities*, 24 *AM. INDIAN L. REV.* 229 (2000) (analyzing culture and community issues raised in working with Native American communities); J. Michael Norwood & Alan Paterson, *Problem-Solving in a Multidisciplinary Environment? Must Ethics Get in the Way of Holistic Services?*, 9 *CLINICAL L. REV.* 337 (2002) (analyzing multidisciplinary practice in the UNM Child Advocacy Clinic); Michael Norwood, *Scenes from the Continuum: Sustaining the MacCrate Report's Vision of Law School Education into the Twenty-First Century*, 30 *WAKE FOREST L. REV.* 293 (1995) (analyzing the impact of clinical education during law school); J. Michael Norwood, *Requiring a Live Client, In-House Clinical Course: A Report on the University of New Mexico Law School Experience*, 19 *N.M. L. REV.* 265 (1989) (analyzing the structure and history of the UNM clinical program); Antoinette Sedillo López, *Teaching a Professional Responsibility Course: Lessons Learned from the Clinic*, 26 *J. LEGAL PROF.* 149 (2002) (describing UNM clinical experiences and the crossover with professional responsibility); Antoinette Sedillo López, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 *CLINICAL L. REV.* 307 (2001) (describing the impact of specialization on skills training and social justice); Lee E. Teitelbaum, Antoinette Sedillo López & Jeffrey Jenkins, *Gender, Legal Education, and Legal Careers*, 41 *J. LEGAL EDUC.* 443 (1991) (analyzing the impact of the UNM clinical programs on gender, legal education and careers); Alfred Dennis Mathewson, *Commercial and Corporate Lawyers 'n the Hood*, 21 *U. ARK. LITTLE ROCK L. REV.* 769 (1999) (describing the impact of the UNM clinical program on small businesses especially by training minority lawyers); Montoya, *supra* note 2 (describing the impact of clinical training in pedagogy); *Amicus Briefs in Grutter v. Bollinger and Gratz v. Bollinger, in Support of The University of Michigan: Brief of Amici Curiae, The New Mexico Hispanic Bar Association, The New Mexico Black Lawyers Association, and The New Mexico Indian Bar Association*, 14 *LA RAZA L.J.* 51 (2003) (describing the impact of the UNM clinical program on low-income racial

colleagues who teach outside of the clinic,<sup>18</sup> staff members,<sup>19</sup> clinical teachers in other programs, and the work of individuals in other disciplines.<sup>20</sup>

### I. TEACHING AND LEARNING OBJECTIVES RELATING TO CULTURAL CONTEXT AND INTERCULTURAL REPRESENTATION

Ideally, students welcome training about cultural context, self-awareness, and intercultural communication, because it will enhance

minorities); Andrea M. Seielstad, *Unwritten Laws and Customs, Local Legal Cultures, and Clinical Legal Education*, 6 CLINICAL L. REV. 127 (1999) (describing some of the “legal culture” issues students must address); Renee Taylor, *All My Relationships*, 26 N.M. L. REV. 191 (1996) (comparing the UNM clinical program with the clinical program at the Vancouver Aboriginal Justice Centre); Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories*, 1 CLINICAL L. REV. 41 (1994) (describing some of her experiences teaching in UNM’s clinical law program).

18. P.S. (Sam) Deloria, the former director of the American Indian Law Center housed at the University of New Mexico, has emphasized the distinction between learning about a culture and learning how to communicate with and listen to an individual while trying to minimize bias, judgment, and cultural blinders. He knows a great deal about the danger of stereotyping. Sam and the other staff members of the Summer Prelaw Institute have over thirty years of experience training Native American students to prepare them for law school. They have a deep reservoir of expertise in culture and in acculturation issues faced by Native American people. Our dean, Suellyn Scarnecchia, has a background in these issues from her work as Associate Dean for Clinical Affairs at the University of Michigan. While she has not taught in our clinic, her leadership on these issues is instructive. See, e.g., Suellyn Scarnecchia, *Gender and Race Bias Against Lawyers: A Classroom Response*, 23 U. MICH. J.L. REFORM 319 (1990).

19. We always employ at least one staff member who speaks Spanish because of the needs of our clients and we try to cultivate diversity among our staff members, who are led by Gloria Gomez, the Clinic’s program administrator. She and the other staff members, including Roberta Remington, Christy Lujan, Martha Ridenour, and Monika Parker, have taught me a great deal about these issues.

20. See, e.g., DANIEL LANDIS, JANET M. BENNET & MILTON J. BENNETT, *HANDBOOK OF INTERCULTURAL TRAINING* (3d ed. 2003); SUNITA MUTHA, CAROL ALLEN & MELISSA WELCH, *TOWARD CULTURALLY COMPETENT CARE: A TOOLBOX FOR TEACHING COMMUNICATION STRATEGIES* (2002); MAGGIE ANICICH & REA KIRK, *CULTURAL AWARENESS EDUCATION IN EARLY CHILDHOOD EDUCATION* (1999), [http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/15/dd/d7.pdf](http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/15/dd/d7.pdf); James A. Banks et al., *Diversity Within Unity: Essential Principles for Teaching and Learning in a Multicultural Society*, 83 PHI DELTA KAPPAN 196 (2001); Milton J. Bennett, *A Developmental Approach to Training for Intercultural Sensitivity*, 10 INT’L J. INTERCULTURAL REL. 179 (1986); Geneva Gay, *A Synthesis of Scholarship in Multicultural Education*, NCREL (1994), <http://www.ncrel.org/sdrs/areas/issues/educatrs/leadrsrp/le0gay.htm>; Rod Janzen, *Melting Pot or Mosaic?* EDUC. LEADERSHIP, May 1994, at 9; Gloria Ladson-Billings, *What We Can Learn from Multicultural Education Research*, 51 EDUC. LEADERSHIP 22 (1994); Luis A. Vargas, *The Elusive Concept of Culture: Implications to Psychology Practice and Policy*, Division 37 Presidential Address at the 112th Annual Convention of the American Psychological Association (July 30, 2004).

the quality of their client representation. However, until the issues are presented in specific cases, some students do not see the relevance of having sessions on cultural issues and “difference.”<sup>21</sup> Some see the exploration of these issues as “political correctness” or something pushed by the faculty of color to further a political agenda.<sup>22</sup> Of course, some students welcome the training and suggest that we spend more class time on these issues.<sup>23</sup> Others are mildly indifferent until an issue they realize is related to a cultural issue emerges in their cases.<sup>24</sup> Then they are motivated to learn to be effective in their client representation and realize that cultural issues are important to understand and address. This is an opportune “teaching moment.”<sup>25</sup> The faculty member is in a position to help the student develop cognitively, affectively, and behaviorally as part of the case

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21. See Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 332, 342–44 (1982) (discussing adult learning theory and how an adult learner’s “readiness to learn” is related to a problem-centered frame of mind; thus, teaching about problem areas should occur close to and be related to problems they will encounter).

22. See Antoinette Sedillo López, *Latinas in Legal Education: Through the Doors of Opportunity: Assimilation, Marginalization, Cooptation or Transformation?*, 13 AM. U. J. GENDER SOC. POL’Y & L. 109, 112–18 (2005) (exploring issues that might be faced by Latinas in legal education including assimilation and marginalization in which assumptions are made about Latinas’ interests).

23. I regularly receive such comments as we deal with these issues in the clinic, and sometimes the course evaluations reflect this sentiment. Of course, I also receive negative comments about “pushing an agenda” or making a big deal out of “nothing.”

24. Our Clinical Law Program functions as one large law office, with different “sections” headed by a faculty member. Our sections are groups of eight or fewer and are grouped more in connection with client communities served than they are on subject matter. For example, the Southwest Indian Law Clinic section serves native individuals and tribal communities in myriad areas. The Economic Development & Tax Clinic section serves small businesses, low income taxpayers in disputes with the IRS, and individuals who are clients of our community partners, ACCION, a micro-lending organization involved in a variety of issues with an emphasis on economic development, and the South Valley Business Development Center, a small business incubator. Our Community Lawyering Clinics focus on serving the client base of our community partners. Our Med/Law Alliance focuses on serving patients of our Medical School Alliance partners. Of course, whom we serve does affect what the students are likely to do. For example, the Med/Law Alliance works almost exclusively on family and children related issues, but sometimes landlord/tenant cases or other poverty law related cases present themselves. Our decisions to accept these cases are based on educational value to the students and our ability to handle the case competently given available resources.

25. Cynthia Dennis has pointed out that while interactions between students and clinic supervisors are rich with “teaching moments,” not all teaching moments are “learning moments” for students. See Cynthia M. Dennis, *Expanding Students’ Views of the Dilemmas of Womanhood and Motherhood Through Individual Client Representation*, 46 HOW. L.J. 269, 278 (2003).

supervision. This may be one of the most effective methods to help students learn about these issues.<sup>26</sup> In my clinical teaching I try to refrain from “preaching” about these issues and let the power of experiential learning reveal to the students the need for this type of learning.<sup>27</sup>

In a seminal article, Sue Bryant proposes five concrete “habits” to enhance cultural competence.<sup>28</sup> The habits are: (1) Degrees of Separation and Connection (charting client differences and similarities);<sup>29</sup> (2) The Three Rings (expanding habit one to include the legal actors);<sup>30</sup> (3) Parallel Universes (exploring and considering alternative explanations for clients’ different behavior);<sup>31</sup> (4) Red Flags and Remedies (using multicultural communication strategies when communication breaks down);<sup>32</sup> and (5) The Camel’s Back (developing self-awareness, including awareness of bias and stereotype).<sup>33</sup> The habits contain many of the concepts described in this Article and we have used Bryant’s article in our clinic to help train students.

The following part discusses teaching objectives that may be used by teachers who seek to address these issues with their students.<sup>34</sup> These objectives involve “breaking” habits of mind and behavior that can inhibit intercultural communication and learning and “making” habits of behavior and thought that enhance learning and communication.<sup>35</sup> Of course, teachers should avoid making

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26. See Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 146–49 (1993–94).

27. See Bloch, *supra* note 21, at 332.

28. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001).

29. *Id.* at 64–67.

30. *Id.* at 68–70.

31. *Id.* at 70–72.

32. *Id.* at 72–76.

33. *Id.* at 76–78.

34. Our Clinical Program is designed so that students and faculty meet about five times a week in either small groups (the faculty member with the up to eight students assigned to his or her section) or large groups (all of the sections of the clinic meeting together). This large group can be as big as forty students. Our clinic is a graduation requirement, and we have between 110 and 120 students a year who are enrolled in the clinic over the course of the fall, spring, and summer semesters.

35. I provide a memo to students at the beginning of the semester setting out course objectives in question format. The memo addresses many areas that arise from the MacCrate



assumptions about their students' pre-existing knowledge and abilities (or lack thereof), as individuals come to law school with a range of experience and skills. I have found that in trying to teach about these issues, I have learned a great deal from students and clients and, of course, have much more to learn.

#### *A. Learning About Cultural Context (Cognitive Goals)*

A student working with clients from a different culture should make it a habit to learn about aspects of that culture.<sup>36</sup> For example, the student should further his/her cognitive knowledge about different cultural values and beliefs as well as their impact on human behavior and communication, especially as those issues might affect the attorney-client relationship and representation. It is important that students understand that "culture" is a dynamic concept and not an immutable characteristic.<sup>37</sup> In connection with learning about culture,

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statement of skills and values. The questions in the memo that address culture and difference issues include: "Do I take every opportunity to learn about my client, including background and culture, as well as the client's problem and objectives of the representation? Do I research all relevant issues including those involving the client's culture and background? Do I approach all of my clients with humility and respect? Do I listen carefully to my clients and seek assistance when I feel I don't understand my client's perspective? Do I work on understanding myself as a cultural being to better understand differences between others and me? Do I check my reactions to events and try to identify any stereotypes or bias, so that I can ensure that my representation is based on facts and not assumptions? Do I explore alternative explanations for differences as part of understanding differences? Do I seek to understand differences between my client and me and seek to communicate effectively across those differences?"

I go over the memo with my small group at the beginning of the semester and ask them to ask any questions about the memo. I sometimes refer to the memo in mid-semester and end of semester feedback sessions. I also ask the students to review the memo when they prepare an end of semester reflection paper. I also may refer to the memo in a feedback or supervision session, if it seems appropriate.

36. One can learn a great deal about general aspects of culture from reading, discussions, interviews, films, lectures, travel, learning a new language, and personal interactions. *See, e.g.*, Antoinette Sedillo López, *A Comparative Analysis of Women's Issues: Toward a Contextualized Methodology*, 10 HASTINGS WOMEN'S L.J. 347 (1999); Antoinette Sedillo López, *Ethnocentrism and Feminism: Using a Contextual Methodology in International Women's Rights Advocacy and Education*, 28 S.U. L. REV. 279 (2001). However, the most important source for learning about the client's "differences" is the client.

37. *See* Janelle S. Taylor, *The Story Catches You and You Fall Down: Tragedy, Ethnography and "Cultural Competence,"* 17 MED. ANTHROPOLOGY Q. 159, 164-72, 179 (2003) (criticizing the use of the book, ANNE FADIMAN, *THE SPIRIT CATCHES YOU AND YOU FALL DOWN* (1997), to teach cultural context as presenting culture as a reified unchangeable aspect of a people).

the student should learn about overall structural issues of cultural difference, such as cultural adjustment, culture shock, ethnocentrism, bias, ethno-relativism, prejudice, and institutional racism.<sup>38</sup> This knowledge will help develop the student's understanding about how culture is affecting the client and how it might also affect the student.<sup>39</sup> And, finally, the student should learn about culture-specific context (aspects of specific cultures including language, values, beliefs and customs),<sup>40</sup> being careful not to "learn" stereotypes of the clients he/she serves.<sup>41</sup> The most important source of cultural information about the client should come from the client.<sup>42</sup> The student should spend time listening to the client's concerns and gently probing to understand the reasons for different beliefs, actions, and values. This will help the lawyer understand and make judgments about the facts of the case and break the habit of exercising judgment based on stereotypes and assumptions.<sup>43</sup>

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38. See DERALD WING SUE & DAVID SUE, *COUNSELING THE CULTURALLY DIFFERENT: THEORY AND PRACTICE* (2d ed. 1990) (arguing that understanding the role of race in intercultural communication is an important aspect of learning to counsel different clients); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 *GOLDEN GATE U. L. REV.* 345, 377–91 (1997) (describing how unconscious racism and cultural hegemony can affect the communication process between a lawyer and a client).

39. See Isabelle R. Gunning, *Diversity Issues in Mediation: Controlling Negative Cultural Myths*, 1995 *J. DISP. RESOL.* 55, 68–80 (identifying American values that may not be shared across cultures and the importance of such identification in mediation).

40. RICHARD D. LEWIS, *WHEN CULTURES COLLIDE* (2004). See Barbara Wass Van Ausdall, *Books Offer Entry into Understanding Cultures*, 51 *EDUC. LEADERSHIP* 32 (1994).

41. Peter Margulies describes the risk of stereotyping clients in the context of clients he and his students represented at CUNY Law School. Peter Margulies, *The Mother with Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Legal Education*, 88 *NW. U. L. REV.* 695, 706–16 (1994). See also Susan T. Fiske, *Controlling Other People: The Impact of Power on Stereotyping*, 48 *AM. PSYCHOLOGIST* 621 (1993).

42. Steven F. Arvizu & Marrietta Saravia-Shore, *Cross-Cultural Literacy, An Anthropological Approach to Dealing with Diversity*, 22 *EDUC. & URB. SOC'Y* 364 (1990).

43. Professor Alfred Mathewson has written an essay about incorporating race issues into the teaching of business courses as they are presented in the cases, "in ordinary course." See Alfred D. Mathewson, *Race in Ordinary Course: Utilizing the Racial Background in Antitrust and Corporate Law*, 23 *ST. JOHN'S J. LEGAL COMMENT.* (forthcoming 2008) (describing how he brings the race of the parties and cultural issues related to race to the foreground in cases discussed in class "when the presence of non-whites is a notable element of the transactional context, when a dispute occurs in a community that may be characterized by its color, and when an issue along the racial subordination/dominance axis occurs in a business setting thus lending itself to a doctrinal analysis under business associations law").

*B. Self-Awareness (Affective Goals)*

A student working with a client from a different culture should approach the client with appropriate respect and humility to enhance the possibility of developing an appropriate relationship and effective communication.<sup>44</sup> In addition to making a habit to learn about the client's culture, the student should learn about himself/herself as a cultural being to understand his/her own role and limits in attempting intercultural learning and communication.<sup>45</sup> The student should make it a habit to check his/her reactions to the communication.<sup>46</sup> The student should learn to understand and become aware of his/her impact on others.<sup>47</sup> Understanding and confronting issues of systemic racism, power imbalance, and insensitivity is crucial to gaining effective self-awareness.<sup>48</sup> This self-awareness can be quite powerful. It involves breaking habits of obliviousness and making habits of self-reflection.<sup>49</sup> Suggesting that students take the time to reflect on their relationship with the client in light of what the students have learned about culture can help students develop this type of self-awareness.<sup>50</sup>

Finally, the student should develop both a desire to become an effective life-long language and cultural learner, and an openness to learning about and across differences.<sup>51</sup> Of course, our students come

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44. See Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 375–83 (2005).

45. See Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1812 (1993).

46. See Weng, *supra* note 44, at 392–93.

47. See, e.g., Gary Coombs & Yolanda Sarason, *Culture Circles: A Cultural Self-Awareness Exercise*, 22 J. MGMT. EDUC. 218 (1998).

48. SUE & SUE, *supra* note 38, at 5–6, 114.

49. See, e.g., Silver, *supra* note 6 (describing the relationship of race to culture and the ways in which racism affects intercultural and interracial attitudes and interactions and describing the need to explore one's own racism).

50. For example, a supervisor can ask questions about the relationship: Why do you think the client has not returned your phone call? Why do you think the client seems so needy to you? Why do you feel anxious about discussing this issue with the client? Why did the client seem angry? Why do you think that the client agrees with everything you say, but seems to take actions inconsistent with what you expected? Why do you avoid working with this client? Why do you seem angry about the interaction with this client?

51. See, e.g., Ron Brandt, *On Educating for Diversity: A Conversation with James A. Banks*, 51 EDUC. LEADERSHIP 28, 28–30 (1994) (interview describing deeper implications of

with various levels of self-awareness; gaining insight into these aspects of their personalities is a challenging, but valuable exercise for them.<sup>52</sup> Developing an attitude of respect, openness, and curiosity will enhance the students' ability to develop effective cross-cultural skills. And, of course, these same traits are important for the supervisor to continually develop as well.

### *C. Developing Intercultural Practice Skills (Skills Goals)*

Once the student has learned about the cultural context and developed self-awareness, a student is in a position to build on this knowledge and enhanced self-awareness to develop skills to appropriately address the issues of difference. Thus, the student is positioned to develop better communication and listening skills to effectively communicate and learn across differences.<sup>53</sup> In addition, the student can develop more effective skills in information gathering techniques using methods appropriate to the circumstances.<sup>54</sup> The student can use the knowledge to test his/her understanding for assumptions and bias. The student will learn to base case planning and problem solving on facts about the individual client and breaking habits of making assumptions and stereotypes. The student will learn to check facts and understandings carefully with the client and engage the client in joint decision-making to ensure that the client is effectively involved in the representation.

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cultural education including sensitivity and understanding); Melanie Tervalon & Jann Murray-Garcia, *Cultural Humility Versus Cultural Competence: A Critical Distinction in Defining Training Outcomes in Multi-cultural Education*, 9 J. HEALTH CARE POOR & UNDERSERVED 117 (1998).

52. See Lawrence M. Grosberg, *Should We Test Interpersonal Lawyering Skills?*, 2 CLINICAL L. REV. 349 (1996) (arguing for the need to teach interpersonal skills and suggesting methods of evaluating those skills in addition to direct observation and supervision); Silver, *supra* note 6, at 244.

53. See Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373 (2002) (suggestions for being more culturally competent in the interviewing and counseling context using heuristics as practical tools to focus on aspects of culture that may affect the communication process).

54. See Gerald López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1989) (evaluating claims of Chicanos who alleged discrimination and noting the difficulties lawyers can have in negotiating cultural and structural issues).

These teaching objectives can help faculty members focus their efforts to engage the students in developing effective strategies for approaching cross-cultural representation. Reflection about these objectives can help supervisors prepare for addressing these issues as they come up in the course of supervision. These objectives can be modified to suit the supervisor's personality and cultural context. For example, a Latina from the Southwest might approach the objectives differently than a white woman from the East Coast, and both will also adapt them to the diversity and experience level of their students. The Latina may be more familiar with the cultural values of her birth culture and the white woman might be more familiar with the cultural values of her culture. Their different experiences will contribute to the perspectives they share with the students. Thinking about teaching goals can help the supervisor prepare for and address the cultural issues as they arise.

Sharing the supervisor's objectives with students will help students focus their own learning and help them participate as collaborative learners/teachers of each other and of the supervisor.<sup>55</sup> After all, each student brings his/her own perspective and cultural context to bear on the issues (as does each faculty member). As the students meet clients and think about appropriate representation, the students can reflect on the relevance of culture to the representation. Once the students see and understand the relevance of cultural understanding and communication to the representation, the other learning objectives become more important to effective representation, and the students are motivated to discuss and address the issues.

## II. INTEGRATING THE OBJECTIVES INTO SUPERVISION SESSIONS

Peter Hoffman describes supervision as the core of effective clinical teaching.<sup>56</sup> He sets out three stages of the supervisory relationship. In the initial stage, the student does not possess the

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55. I have found that being clear about my teaching objectives with my students encourages them to focus on the objectives and to work toward teaching and evaluating themselves. This is true in my classroom teaching as well as my clinical teaching.

56. See Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301, 303 (1986).

knowledge or skills to effectively represent a client in a particular case. During this stage, the supervisor must be directive, and state explicitly what the student must do to prepare to meet the client and to learn about the relevant law and procedure that may help the student find potential solutions to the client's problem. Much of the specific direction can be given in small or large group sessions, through clinical manuals, or through web-based instruction.<sup>57</sup> This very early stage is usually not the best place to initiate a discussion about "differences," because it risks teaching stereotypes. Individuals have an innate tendency to categorize and generalize. Thus, attempting to lecture on "differences" among cultures can contribute to this tendency.<sup>58</sup> It is very important for students to see their clients as individuals with specific objectives. In addition, the students are usually overwhelmed with the task of learning about the client, the law, and skills relevant to the case.

In the later but still early stage, after the student has met the client, a supervisor might begin to become less directive in helping the student address many of the issues that the student must consider. The student has developed a little knowledge about relevant law, procedure, and facts. The supervisor should gently probe to ascertain whether the student is aware of potential cultural issues affecting the representation. This should be done carefully, without being judgmental or stereotypical about potential cultural issues. It may be a time to suggest readings, movies, web sites, interviews, and consultations with individuals familiar with the culture to begin the process of cognitive learning about relevant culture. It is critical that the student view the client as the most important source of information about cultural issues as they affect the client. This helps

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57. *Id.* My colleague J. Michael Norwood is developing a "virtual clinic" that we will implement to provide this type of instruction. Younger law students find this format of instruction appealing. In addition, April I. Land and Jose L. Martinez have written the UNM Clinical Law Program Civil Practice Manual, which is available on Dspace. JOSE L. MARTINEZ & APRIL I. LAND, CIVIL PRACTICE MANUAL FOR THE CLINICAL LAW PROGRAM UNIVERSITY OF NEW MEXICO SCHOOL OF LAW (2003), [https://repository.unm.edu/dspace/bitstream/1928/476/1/CivilPractice\\_Manual.pdf](https://repository.unm.edu/dspace/bitstream/1928/476/1/CivilPractice_Manual.pdf). See also, Barbara Beaupre, *Blending Cultural, Academic, and Technological Communication: Literacy for the New Millennium*, ED 441234 (2000), [http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/16/37/10.pdf](http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/16/37/10.pdf).

58. See Fiske, *supra* note 41, at 3–5.

the student avoid making assumptions about the client that may not apply.

In the middle stage of the supervisor relationship, the student should be gaining confidence and ability to assume responsibility and develop his/her cases.<sup>59</sup> This is likely to be the best time to work with the student on cultural literacy, self-awareness, and skills. At this point, the student should be consulting with the client about the objectives of the representation and trying to understand the client's perspective. This is often where cultural issues are revealed. The student's perspective (influenced by his/her culture) may differ on issues such as the client's lifestyle choices, values, or desires. The student needs to develop appropriate openness and humility in trying to understand the client. These abilities can be coached out of a student through gentle and effective questioning and discussion.<sup>60</sup> A student's values can be identified and the supervisor can use self-awareness exercises to help the student become aware of his/her own values and perspective.<sup>61</sup> The applicable rules of professional responsibility can be used to help the student understand that competence requires understanding the client's objectives.<sup>62</sup> As the student learns that there are many potential responses to a problem, the student will begin to realize the relevance of cultural differences to the solution of that problem.

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59. Hoffman, *supra* note 56, at 307.

60. An example might be to ask the student whether he/she believes the client has confidence in the student. Another question is whether the student has confidence in the client. The responses can trigger a discussion that can help the student reflect on the communication and identify barriers to communication which might include cultural differences.

61. A common exercise is to ask students to chart their similarities and their differences from their client. *See* Bryant, *supra* note 28, at 65–67. Another exercise is to write the word “culture” on the board and ask students to write for five minutes about their understanding of their own culture. Then, the instructor can ask them to write for five minutes on the culture of someone different from them. Next, the instructor can ask students to share the differences and similarities with the group. This usually leads to a rich discussion of culture and difference.

Another exercise is to ask students to share experiences with discrimination and bias and have the class analyze the experience from an empathetic perspective. The goal is to get students to brainstorm how to reduce bias and remedy discrimination. Sometimes students will talk about “good” bias, that is, positive feelings toward a group. A resource for simple exercises is L. ROBERT KOHLS & JOHN M. KNIGHT, *DEVELOPING INTERCULTURAL AWARENESS: A CROSS-CULTURAL TRAINING HANDBOOK* (1994). The book is designed for Americans with very limited cross-cultural exposure to understand the general idea of culture.

62. MODEL RULES OF PROF'L CONDUCT R. 1.2(a) (2007).

The supervisor should work on his/her own cultural cognitive knowledge, attitudes, and skills to model sensitive representation.<sup>63</sup> The supervisor should be (or become) aware of his/her own biases and values and be willing to share with the student his/her own limitations and uncertainties. Clearly, a supervisor should not come off as “knowing it all.”<sup>64</sup> During this stage the student and supervisor should act as equals sharing information about the client and ideas about the representation.<sup>65</sup>

In the final stages of the supervision, the supervisor acts more as a safety net for the student.<sup>66</sup> The supervisor should ensure that the student’s decisions are reasonable but should not direct the student’s practice decisions. This is a stage in which cultural issues can be discussed at a fairly sophisticated level. The student will have researched and learned from the client about the client’s specific cultural context, will be in the process of developing good communication strategies, and will have explored his/her attitudes. Conversations with the supervisor can help the student deepen his/her self-awareness. Moreover, conversations with students deepen the supervisor’s own self-awareness.

Finally, an important aspect of supervision requires giving the student feedback.<sup>67</sup> This can be difficult when discussing the student’s progress in effectively addressing cultural issues in the representation. Educational experts have described the difference between formative feedback that is given to a student to help the student improve and summative feedback that evaluates the student’s performance.<sup>68</sup> Helping the student to understand objectives and set personal goals can help a supervisor give formative, helpful feedback

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63. Reading broadly about different cultures, choosing films that enhance cultural understanding, talking to individuals from different cultural groups about their cultures, and attending different cultural events can help the supervisor learn about culture and model cultural interest for students.

64. I included “teaching (and learning)” in the title of this Article to emphasize that the supervisor is also engaged in learning about these issues, even as we strive to teach about them.

65. See Hoffman, *supra* note 56, at 309.

66. See *id.* at 310.

67. See Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLINICAL L. REV. 143 (2006) (describing how to use feedback sessions to teach students to self-critique).

68. STUCKEY ET AL., *supra* note 13, at 255–59; SULLIVAN, *supra* note 13, at 171–72.



to a student. Feedback is most effective when it is used in relation to a specific case, and the cultural issues raised by the facts in the case are not simply abstract ideas. Thus, a supervisor can point to the objectives and ask the student to consider how well he/she met the objectives. This can help the student consider his/her own cognitive knowledge, self-awareness, and skills-based development in the context of effective representation of his/her clients. The supervisor can guide the student to reflect on the student's progress toward achieving objectives.<sup>69</sup>

### III. VIGNETTES ILLUSTRATING CULTURAL ISSUES IN REPRESENTATION

A challenge in teaching about cultural issues is that sometimes these issues seem invisible. Just like students must learn to "spot" the legal issue, students must be taught about identifying, learning about, and addressing the cultural issues. The following vignettes illustrate real issues that have come up in the course of representations. Supervisors and students can use them to learn about potential issues that might arise in the course of a representation.<sup>70</sup> The vignettes are set out in the first paragraph and are followed by an analysis of how effective supervision can help students address the cultural issues effectively. The title of each vignette sets out the primary teaching objective to be addressed with effective supervision.

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69. Blaustone, *supra* note 67, at 155.

70. I have given these vignettes to students both with and without the analysis contained after the first paragraph. I think it is more effective to give the vignettes to students without the analysis, because their own analyses of the vignettes are very rich and provide excellent discussion opportunities. Another important activity is to ask the students to present cultural issues that come up in their cases. For example, several students have mentioned different perspectives on time. Others have come to important realizations about the challenges faced in poverty situations. Tasks that seem simple for students can seem overwhelming to someone with inadequate housing, transportation, nutrition, medical services, and day care. This deepens students' awareness of class as an aspect of cultural difference. Asking students to describe these differences can be effective for the group.

*A. Cultural Context and Communication: The Navajo Blankets*

A law student and his supervisor work with a Navajo family who live in a mobile home.<sup>71</sup> The husband lost his job and they are in danger of losing their mobile home. In the course of preparing the bankruptcy paperwork, the couple discusses in great detail the quantity and quality of a Pendleton and woven blankets they own. The student tries to move them quickly through the itemization of household items. The faculty member and student think the family is not sufficiently disclosing information about vehicles and livestock, because they have listed saddles but not horses and they have appeared to meetings in cars, yet they list no vehicles.

Luckily, the student and supervisor enlist a law teacher and student in the Southwest Indian Law Clinic to work on the case. From the supervisor, whose mother is Navajo, they learn useful information that illuminates some of the issues. In Navajo culture, blankets are an indicator of wealth and status.<sup>72</sup> The Pendleton and woven blankets are very important to the family and the knowledge that they are more than likely going to keep them upon declaring bankruptcy would be very reassuring. Further, bankruptcy tends to be an emotional experience and at odds with their sense of self-worth in the culture and community. The student could use this knowledge to reassure the client about the bankruptcy process and might listen respectfully to discussion of the blankets because it will build trust, which will be essential to developing an effective attorney-client relationship.

As for the saddles, in Navajo culture, livestock could be owned by some family members, but used by others. Thus, the family could be correct in not listing the horses as part of the bankruptcy estate. This is very important, because if the horses do belong to them, even in

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71. This story is discussed by the supervisor in the case in an article describing issues faced by our clients in a bankruptcy case. See Nathalie Martin, *Poverty, Culture and the Bankruptcy Code: Narratives from the Money Law Clinic*, 12 CLINICAL L. REV. 203, 220–21 (2005). For a discussion of the Navajo legal system and its evolving Navajo culture, see Antoinette Sedillo López, *Evolving Indigenous Law: Navajo Marriage: Cultural Traditions and Modern Challenges*, 17 ARIZ. J. INT'L & COMP. L. 283 (2000).

72. For an interesting study of the development of Navajo weaving, see Nancy J. Blomberg, *Sacred Figures in Navajo Blankets: A Re-evaluation of Timeframe and Its Implications for Cultural Change*, 55 THE KIVA 357 (1990).

part, they must list them on the bankruptcy petition, or risk the loss of the ability to discharge their debts.<sup>73</sup> As for the vehicle in which the family arrived for interviews, it is common for many Navajo families who live on reservations to borrow vehicles from other families, and it is also possible that the vehicles might be shared. Such knowledge is relevant to the representation. Thus, the attorney conducting the interview should be comprehensive in asking questions about property that might be owned or used by the family and should be open to understanding alternative visions of property.<sup>74</sup> Knowledge about Navajo culture and living circumstances can assist the attorney in obtaining salient information and understanding the clients' approach to providing the information needed for the representation.

In this vignette, learning about specific aspects of Navajo culture and developing effective listening and communication skills about this family's circumstance is important to effective representation. Working with the family with humility and sensitivity ensures that the issues get addressed and that the proper information is elicited for the bankruptcy petition. This approach to gathering evidence can be practiced in roleplaying, but a supervision session in which the supervisor guides the student to see the value of the approach will likely have a great impact on the student.

*B. Learning Cultural History, Exploring Bias and Developing Sensitivity: The Indian Child Welfare Act and the Fatherless Child*

A woman who has been referred by a program for drug addicted pregnant women comes to the clinic seeking to give her child up for adoption because she believes she is not capable of caring for the

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73. 18 U.S.C. § 152(1), (7) (2000). *See, e.g.*, *United States v. Grant*, 971 F.2d 799, 807 (1st Cir. 1992) (en banc); *United States v. Guiliano*, 644 F.2d 85, 87 (2d Cir. 1981); *United States v. Beery*, 678 F.2d 856 (10th Cir. 1982), *cert. denied*, 471 U.S. 1066 (1985); *Coghlan v. United States*, 147 F.2d 233 (8th Cir. 1945), *cert. denied*, 325 U.S. 888 (1945) (interpreting a similar provision in a prior version of the code).

74. *See, e.g.*, Stacy L. Leeds, *The Burning of Blackacre: A Step Toward Reclaiming Tribal Property Law*, 10 KAN. J.L. & PUB. POL'Y 491 (2001) (tribes should look to traditional conceptions of property to try to remedy the damage caused by the federal allotment act); Kenneth H. Bobroff, *Retelling Allotment: Indian Property Rights and the Myth of Common Ownership*, 54 VAND. L. REV. 1559, 1597 (2001) (describing historical and contemporary conceptualizations of ownership rights, including those of the Navajo Nation).

child. She would like her paternal aunt to adopt the child once it is born. The woman is of Mexican origin and has been living on the streets for the last couple of years. When asked about the father of the child, the client hesitates and states she is unsure. It could be one of three people. One of the three is a Native American. The student, who is a white male in his early twenties, is frustrated because if the father is Native American, the adoption will be more complicated. Under the Indian Child Welfare Act (“ICWA”),<sup>75</sup> tribal governments are to receive notice if the parental rights of an Indian are going to be terminated. The student has trouble believing that the client does not know who the father is and he would like to push the client into naming a father, preferably one of the men who is not Native American so he can proceed with the adoption process. In the course of discussing the case with the supervisor, the student makes derogatory comments about Indians and tribal sovereignty and the woman’s sexual history. This is the middle stage of the supervisory relationship in that the student has met the client, performed the research, and has developed some ideas for resolving the case. Normally, it is a transition period where the student is encouraged to develop the case theory and implement it. However, the remarks by the student worry the supervisor.

The supervisor can help the student by asking the student to use “parallel universe thinking” to see the case differently.<sup>76</sup> The supervisor can help by asking about potential reasons that a woman may not want to identify the father of a child. Perhaps she does not know, or there are relationship issues that she would rather not address. The student should try to draw out the facts and circumstances gently and without judgment. Maybe the client will become more forthcoming as their mutual trust develops. The student should try to understand the circumstances leading to the client’s situation in order to help her address her underlying needs. The supervisor raises these issues with the student as part of the supervision in a supportive, non-directive manner. The supervision

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75. 25 U.S.C. §§ 1901–1963 (2000). The late Toby Grossman of the American Indian Law Center helped me learn about ICWA.

76. Bryant, *supra* note 28, at 73.

session involves developing a plan for interviewing the client to better understand the full picture of the case.

In addition, ICWA is not set up to be a barrier to adoption.<sup>77</sup> Rather, its purpose is to help tribes protect their children from being taken from the tribe, in view of a history of adopting native children out of their tribe and culture.<sup>78</sup> Knowledge of the purpose and process of ICWA could help the student to reassure the client about the need for information about the father and the fact that if the child were an Indian child, it would be in the child's best interest to have a connection to his/her cultural heritage.<sup>79</sup> The fact that ICWA applies does not mean that the client's aunt will be unable to adopt the child. Indeed, we have worked out situations with the tribe where the tribe creates possibilities for cultural connection, short of requiring that an Indian family adopt the child.<sup>80</sup> The student's reluctance to use ICWA frustrates the purpose of the Act and undermines effective representation. Of course, failure to comply with ICWA could also lead to problems in the future that could be devastating if the adoption is not competently handled. The student should be encouraged to read the legislative history of ICWA and some of the many articles describing the purpose of the Act.

This can be read to suggest that the supervisor's view of the case trumps any contrary view of the student, which seems at odds with the middle stage of supervision.<sup>81</sup> Nonetheless, while a discussion of the efficacy of ICWA in protecting children is beneficial, the initial remarks of the student offended the supervisor.<sup>82</sup> This "uncivil discourse" can present a barrier to civil dialogue about the issues, and

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77. The National Indian Child Welfare Association provides information and training on ICWA. <http://www.nicwa.org/> (last visited June 16, 2008).

78. Lorie M. Graham, *The Past Never Vanishes: A Contextual Critique of the Existing Indian Family Doctrine*, 23 AM. INDIAN L. REV. 1, 32–33 (1998).

79. Sherman Alexie has written a powerful book illustrating the damage that can be caused when an Indian child grows up without cultural context. SHERMAN ALEXIE, *INDIAN KILLER* (1996).

80. In this case, the tribe was notified of the possibility of Indian paternity and did not choose to participate.

81. Hoffman, *supra* note 56, at 307–19.

82. The derogatory remarks about Indians and the woman's sexual history were particularly offensive to a faculty member of color and probably contributed to the supervisor's defensiveness about the Act. This illustrates the need for a supervisor to be aware of his/her own biases and issues.

both supervisor and student should work to move beyond the offensive comments. The supervisor should be open to discussing the issues without being judgmental.<sup>83</sup>

The student reads about the history of ICWA<sup>84</sup> and the representation continues. With some difficulty, the student begins to understand his own bias and prejudice. The student responds to suggestions by the supervisor that he reflect on the limitations of his cultural blinders and his biases. The supervisor suggests that the student read the Bryant materials<sup>85</sup> and practice the habits in this case. At first, the student resists, reading the suggestion as a criticism of the student's work. However, eventually the demands of the representation cause the student to reflect on his own biases and to explore differences presented by the client. The supervisor and student discuss these issues, and the supervisor is not judgmental of the student, but acknowledges systemic and individual influences on the student's perceptions about women, Native Americans, and tribal governments. The student prepares the notice to the tribe and proceeds with the representation.

*C. Learning About Cultural Context and Understanding the Client's Objectives: The Latin-American Immigrant and Her Abusive Husband*

A bilingual student, who is a third generation Mexican American, interviews a Mexican immigrant who comes to the clinic through a referral from a community service partner, an organization assisting immigrants. The client tells the student that her husband is a good man. He brought her children and her to the United States after raising money to do so by working in the United States for three years as a field hand. During the last harvest cycle, he was injured on the job. Employers who employ field workers are not required to

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83. This might be harder for a supervisor of color, but effective supervision requires the supervisor to model patience and understanding and be non-judgmental.

84. See Walter Kawamoto & Tamaroa Cheshire, *American Indian Families, Resilience in the Face of Legal Economic and Cultural Assault*, in RACE, CULTURE, PSYCHOLOGY, & LAW (Kimberly Holt Barrett & William H. George eds., 2005).

85. Bryant, *supra* note 28.

purchase workers' compensation insurance in New Mexico.<sup>86</sup> As a result, the accident was a devastating blow to the family's finances. At a neighbor's suggestion, the client began to clean houses and take in ironing to help deal with the precarious financial situation. However, in the past few months, her husband has started to drink too much.<sup>87</sup> He yells at her in front of the children and, most recently, after a few drinks, hit her. The client does not want a restraining order or a divorce. She does not want to fill out a petition under the Violence Against Women Act ("VAWA")<sup>88</sup> and petition for residence status, which would give her a temporary work permit. This is because the Act requires her to describe the abuse and state her intention to leave her husband. Instead, she wants the student to talk to her husband and help him get a job that would accommodate his work injury. The student is frustrated, because the student has been trained about the remedies offered by the legal system, such as a restraining order, a divorce, or a VAWA petition. She cannot understand why the client would try to protect her husband.<sup>89</sup> While the student speaks Spanish very well, she worries about whether the client understands her.<sup>90</sup> She thought that her own background as a third generation Mexican American would help her in the representation and is disappointed that she apparently has such a communication gap with her client.

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86. See N.M. STAT. § 52-1-6(A) (1978).

87. See, e.g., Raul Caetano, *Acculturation and Drinking Patterns Among U.S. Hispanics*, 82 BRIT. J. ADDICTION 789 (1987); Sarah E. Zemone, *Re-examining Whether and Why Acculturation Relates to Drinking Outcomes in a Rigorous National Survey of Latinos*, 29 ALCOHOLISM: CLINICAL & EXPERIMENTAL RES. 2144 (2005).

88. 42 U.S.C. § 13981 (2000).

89. The student understands from the clinic training that the client may not be ready to leave her husband. See Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, 28 COLO. LAW. 19 (1999). However, the client's strong desire to *protect* him is difficult for the student to understand.

90. Translating legal terminology has its own challenges. See, e.g., Antoinette Sedillo López, *Translating Legal Terms in Context*, 17 LEGAL REF. SER. Q. 105 (1999) (describing the difficulties of translating legal terms from one legal culture and language into another). See also Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 MICH. L. REV. 2459, 2464 (1989) (discussing the difficulty in representing a Spanish speaking client and discussing whether there was a shared understanding of the meaning of the Spanish term "culpable").

Immigrant women's representation is affected by their language, race, culture and legal status.<sup>91</sup> The student is encouraged to read about the limitations of VAWA and to discuss prior cases with other supervisors and community activists who have worked with immigrant women. The clinic has represented immigrant women from Latin-American cultures in abusive marriages in seeking relief through VAWA and in obtaining temporary restraining orders. The standard procedure is to interview the client, obtain evidence of the abuse, and prepare a petition for filing. For many women, this conversation is extremely difficult and the women seem to have very little support for their decision to leave their abusive husbands. Within many Latino communities, marriage is sacred and not easily dissolved.<sup>92</sup> Many Latina immigrants do not actually want to end the marriage; they just want the violence to stop.<sup>93</sup> In addition, some of the women seem to think that in some cultures a mild level of violence is not considered "abusive," but rather appropriate discipline.<sup>94</sup>

Additionally, the dissolution of the family will probably put more strain on their financial situation. The fact that the husband is unable to support his family is a deep wound to his sense of worth.<sup>95</sup> That wound may be causing the anger that may result in the violence. Perhaps some assistance to the husband in seeking employment and some culturally appropriate counseling would help the husband stop the violence. VAWA has had the unintended consequence of breaking up immigrant families by encouraging divorce and separation. Further, the language barrier they often experience

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91. See Edna Erez, *Immigration, Culture Conflict and Domestic Violence/Woman Battering*, 2 CRIME PREVENTION & COMMUNITY SAFETY: AN INT'L J. 27 (2000).

92. See Julia L. Perilla, *Domestic Violence as a Human Rights Issue: The Case of Immigrant Latinos*, 21 HIS. J. BEHAV. SCI. 107, 123-24 (1999) (describing some of the cultural issues faced by Latinas).

93. See Leigh Goodmark, *Law is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 14-21 (2004).

94. Perilla, *supra* note 92, at 108.

95. See DAVID BACON, CHILDREN OF NAFTA: LABOR WARS ON THE U.S./MEXICO BORDER (2004) (describing the desperate economic plight of Mexican workers).



isolates immigrant women; there are not enough attorneys who can truly communicate with them.<sup>96</sup>

The student has the advantage of being able to communicate with the client directly and that is to be commended. But, the student needs to be assisted in suspending judgment about the client and coached into opening up to understanding the client's needs.<sup>97</sup> The Latin-American woman requires linguistically appropriate and culturally sensitive counseling so that the attorney can truly understand her objectives. The student must also guard against the client's potential deference to authority, which might lead her to follow the attorney's objectives of the representation rather than her own.<sup>98</sup> The client should be referred to social services that will meet her needs and those of her children before she is required to decide what to do about her marriage.<sup>99</sup> The student should work with culturally sensitive social workers and counselors to support the client.<sup>100</sup> The student should also communicate with the client so that the client can have a better understanding of the legal implications of the limited tools for assisting with domestic violence.<sup>101</sup> The client's stated goal of stopping the violence and preserving the family is not consistent with the American legal system's goal of stopping the violence by separating the husband from the family. The client needs

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96. See The Legal Services Corporation, *The Erlenborn Commission Report*, 15 GEO. IMMIGR. L.J. 99, 132 (2000) (language barriers for Spanish speaking clients are formidable); Daniel J. Rearick, *Reaching Out to the Most Insular Minorities: A Proposal for Improving Latino Access to the American Legal System*, 39 HARV. C.R.-C.L.L. REV. 543, 545 (2004) (better access for Latinos will require a coordinated response by law schools including accessible language training to serve non-English speaking communities).

97. See Alex J. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration*, 44 BUFF. L. REV. 71 (1996) (describing the need for lawyers to negotiate a lawyer client relationship of collaboration and equality resulting in joint decision-making).

98. See Heidi M. Bauer et al., *Barriers to Health Care for Abused Latina and Asian Immigrant Women*, 11 J. HEALTH CARE POOR & UNDERSERVED 33 (2000).

99. Enlace Comunitario is an Albuquerque social service organization that provides holistic and culturally appropriate services to immigrant women. Enlace Comunitario, <http://www.enlacenm.org/> (last visited June 17, 2008).

100. See Maria E. Zuniga, *Latinos: Cultural Competence and Ethics*, in CULTURALLY COMPETENT PRACTICE: SKILLS, INTERVENTIONS AND EVALUATIONS 47 (Rowena Fong & Sharlene Furuto eds., 2001).

101. Arlene N. Weisz, *Legal Advocacy for Domestic Violence Survivors: The Power of an Informative Relationship* (1999), <http://www.ncdsv.org/images/Legaladvocacydomesticviolencesurvivors.pdf>.

to know that in this country striking a spouse violates the law. The student needs to develop effective language, communication, and listening skills to understand the client's needs and to communicate the limitations and possibilities of the legal system. The student should be creative in seeking multi-disciplinary solutions that might address the client's objectives more effectively than filing a VAWA petition. These issues can be drawn out in the middle stage of the representation through careful discussions and asking the student to try to understand the client's perspective and values.

If the supervisor feels uncomfortable with her knowledge of some of the cultural issues, she can suggest that the student meet with social workers and others who know about the specific Latino cultural context in this case. The student can be coached to become more empathetic towards the client's dilemma and urged to keep the client relationship intact so that if and when the client is ready to use the tools of the legal system, she will consider coming back. The most important goal for an interview with a domestic violence survivor is to make the client (or potential client) feel comfortable enough to come back.<sup>102</sup>

#### *D. Developing Self-Awareness and Identifying Bias: Grandfather Adoption and the African-American Family*

An African-American grandfather comes to the clinic to seek help because the state has taken three of his grandchildren away from their mother, his daughter.<sup>103</sup> He states that his daughter is unable to care for the children and he would like to take care of them. In working with the state authorities, the state social workers express doubt about his ability to care for the children. One social worker states, "He didn't do a good job with his daughter; what makes him think he can care for these children?" The two students (white females) assigned to the case become concerned about whether it makes sense to help a

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102. See generally Michael J. Strube & Linda S. Barbour, *The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment*, 45 J. MARRIAGE & FAM. 785 (1983); Michael J. Strube & Linda S. Barbour, *Factors Related to the Decision to Leave an Abusive Relationship*, 46 J. MARRIAGE & FAM. 837 (1984).

103. New Mexico permits state removal of an abused or neglected child. See N.M. STAT. ANN. § 32A-4-6 (1978).

sixty-five year-old African-American man seek guardianship of three children under the age of eight. The students and the supervisor begin to worry about their own biases in attempting the representation.<sup>104</sup>

Exploring one's own bias is difficult.<sup>105</sup> Our biases are usually invisible to us, and it is challenging to expose them to scrutiny. Leslie Espinoza Garvey has written a poignant story about an interracial couple involved in domestic violence.<sup>106</sup> In it, she explores her own racism as well as the institutional racism that was revealed when it was discovered that the abusive husband in the case was white.<sup>107</sup> The practice implications of her story are revealing. She and the student expected a judge to incarcerate a black man, but were concerned about whether the judge would incarcerate a white man for the same offense.<sup>108</sup> The race of the parties affected the preparation of the case.

Similarly, in the above vignette, the students must guard against stereotypes of the African-American family and the role of black males in the family. The students' own perceptions of family structure and race should be explored. Typical stereotypes suggest that the African-American women of the extended family should provide the child care. The literature indicates such a pattern.<sup>109</sup> Thus, a social worker or a lawyer may not be open to the possibility of the grandfather stepping in to provide such support despite the fact that given his age and retirement, he may be in a position to provide it, particularly if he receives state assistance and support in doing so.

The students need assistance in evaluating the situation, suspending judgment, and focusing on the relevant underlying facts and not on expectations and assumptions. Again, a good supervision session where the supervisor gently probes assumptions to look for

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104. See Laurie A. Rudman, Richard D. Ashmore & Melvin L. Gary, "Unlearning" Automatic Biases: The Malleability of Implicit Prejudice and Stereotypes, 81 J. PERSONALITY & SOC. PSYCHOL. 56 (2001) (antiracism training appeared to have an effect on changing attitudes in a controlled study).

105. See Silver, *supra* note 6, at 228.

106. Leslie Espinoza Garvey, *The Race Card: Dealing with Domestic Violence in the Courts*, 11 AM. U. J. GENDER SOC. POL'Y & L. 287, 291-95, 305-07 (2003).

107. *Id.*

108. *Id.*

109. See Robert B. Hill, *Dispelling Myths and Building on Strengths, Supporting African-American Families*, 7 J. NAT. RESOURCE CENTER FOR SPECIAL NEEDS ADOPTION 1 (1993) (finding that extended families and strong kinship networks are one of the many strengths of African-American families).

underlying facts can help illustrate the problem. The students need to marshal the facts persuasively on behalf of the client. In this case, the best interests of the children may be furthered by keeping them together with their grandfather rather than separating them and placing them in different foster homes. The grandfather may require assistance in raising the children, and a supportive social worker could help the situation. A social worker that does not expect the grandfather to succeed will not help the situation. Similarly, a lawyer who doubts the grandfather's abilities is unlikely to provide appropriate representation in persuading the decision-makers to place the children in the grandfather's home.<sup>110</sup> The students and supervisor should consider their own biases. They should seek out culturally supportive assistance for the grandfather, expanding the search beyond the usual social service agencies.<sup>111</sup> If there are reasons to question the grandfather's abilities that are not based on assumptions and stereotypes, those must be addressed. The client deserves representation free from bias and stereotypes about him, and the supervisor and students should work toward such representation.

*E. Learning Context, Understanding the Cultural Lenses, Using Effective Communication and Counseling and Multi-Disciplinary Support: Child Custody and the Muslim Arab Father*

A client comes into the clinic seeking a divorce from her husband and custody of their children. She claims that he has been verbally abusive, always criticizing and belittling her. She is an American of Italian heritage and her husband is an Arabic Muslim from a middle-eastern country. While has never hit her, he is very domineering, and she has become increasingly uncomfortable in the marriage, in part because his family has never accepted her. Ever since her nine-month-old son was born, they lavish gifts and attention on the child and treat her as if she were invisible. She would like to end the marriage. She would also like custody of her son and for her husband (and particularly his family) to have very limited visitation.

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110. While students must investigate this matter, bias can prejudice that investigation.

111. African American Family Services may be a place to begin. See <http://www.aafs.net/> (last visited June 21, 2008).

When the client's son was born, her husband bent down and kissed his penis, telling her that it is a custom "in his culture" to give thanks for the birth of a boy by kissing the baby's genitals. She was shocked at the custom and would like to use the incident as a way of getting custody of the child and limiting her husband's visitation. The student believes that the incident might be used to shock the judge into giving limited (and perhaps supervised) visitation. However, the student is concerned about the ethics of using the incident, which appears to be an aspect of his culture and not an aspect of abuse, in the divorce proceedings.

This is a case where cultural insensitivity might actually advantage the client's cause in the short run, but harm the child in the long run, by depriving the child of a relationship with his father. Indeed, since the child will be of "mixed" heritage, the deprivation of the father will also affect his ability to learn about his cultural heritage. The student should discuss the implications of using the incident against the husband, including the potential harmful effects to her son. Also, if the Muslim husband's lawyer is culturally aware and educates the judge properly about the incident, the use of it might backfire in the custody proceeding and the client might be viewed as vindictive and hostile to her soon-to-be ex-husband's (and son's) cultural heritage, which could in turn harm her son and harm her custody case as well.

In the summer of 2004, I discussed this vignette at the International Family Law Society Conference in Beijing. Several Malaysian Muslim law professors attended the conference. They very gently (at a luncheon after my presentation) pointed out that this custom was not prevalent in Malaysia and was not an aspect of Muslim faith. If it is a cultural practice related to middle-eastern countries or to Arabic cultures, they were not familiar with it. Thus, it is unclear to me whether this was a broad cultural practice, or perhaps a cultural practice unique to a small group, or not even a cultural practice, but something unique to a family. Alternatively, it may not have had any cultural implications at all. I realized that we had not investigated this question.<sup>112</sup>

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112. I still have not been able to learn the answer to this question. I have come to conclude that it does not matter. The "difference" in behavior needed to be understood whether it was

Nonetheless, other than the incident, there were no other indications of inappropriate parenting behavior toward the child. While the issue of the behavior of the father needs to be explored, it is not appropriate to immediately jump to a conclusion that the incident is sexual child abuse. In addition, attempting to suspend judgment in the face of difference can help this family in the long run. Counseling may help the client focus on issues that might be more relevant to the best interests of her son, who, after all, has the Muslim religion and Arab culture as part of his heritage. The client is going to need culturally appropriate assistance rearing the child to value both aspects of his culture and to adapt to living in the United States as a person of mixed heritage.<sup>113</sup> This vignette provides important lessons about how challenging it is to learn about different cultures and insight into difference that might not be cultural.

#### IV. SUMMARY OF STRATEGIES FOR EFFECTIVE CROSS-CULTURAL LAW PRACTICE

The above vignettes illustrate the importance of cultural training to effective representation. They suggest several strategies for effective cross-cultural representation. These strategies should be in the supervisor's "tool-kit": The attorney should approach the client with humility and respect. He/she should be open to exploring "underneath" what is said by the clients and should guard against making assumptions and acting on stereotypes. The attorney should act on factual information and not assumptions. The attorney should try to learn about aspects of the culture through research, which must include using the client as a source of cultural information.<sup>114</sup> The attorney should explore the client's reality about aspects of the culture and treat the client as an individual and not simply as a member of his/her culture. The attorney should seek out contact with members of the community to learn more about the culture and to test

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cultural or not.

113. See ERNEST NASSEPH MCCARUS, *THE DEVELOPMENT OF ARAB-AMERICAN IDENTITY* (Ernest Nassept McCarus ed., 1994).

114. In prior articles, I have offered an approach to researching culture using comparative analysis. See Sedillo López, *Ethnocentrism and Feminism*, *supra* note 36; Sedillo López, *A Comparative Analysis of Women's Issues*, *supra* note 36.

the attorney's research and knowledge about the culture. The attorney should understand his/her own cultural context and the limitations that his/her biases may present. The attorney should be open to "thinking outside the box" about the client's problems and involve the client in problem solving and in seeking solutions to the client's legal dilemmas. The lawyer should spend time thinking about how to communicate with the client so that the client can understand the issues more completely. The attorney should seek the assistance of interpreters and multi-disciplinary professionals to enhance mutual communication and understanding. The lawyer should consistently check the client's and the lawyer's own understandings of the case. On a larger scale, the legal profession needs more attorneys who speak a second language so that non-English speakers can communicate directly with their lawyers. The cultural knowledge and understanding that comes with speaking another language is invaluable.<sup>115</sup>

#### CONCLUSION

Because intercultural miscommunication and a lawyer's stereotypes and biases about a client can affect the quality of the representation, lawyers should attempt to develop skills to understand and communicate across differences as an aspect of representation. It is not possible to become completely "culturally competent" because of the multitude of potential cultural issues and the plethora of ways in which they might affect a representation. Working on cultural knowledge, intercultural communication skills, and self-awareness is a lifelong journey. When we label "cultural competence" as a specialized skill, we risk limiting representation of clients from different backgrounds. For example, an attorney might decline representation by saying, "I am not culturally competent to represent this particular client."<sup>116</sup> This would further limit representation for individuals who already lack access.

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115. See, e.g., COLIN BAKER, A PARENTS' AND TEACHERS' GUIDE TO BILINGUALISM (2000) (describing the many benefits of bilingualism including greater cultural understanding).

116. Luis Vargas, *supra* note 20. My colleague, Christine Zuni Cruz has also made this point.

It is possible for lawyers, as part of their overall development as professionals, to develop an understanding of cultural issues and their potential impact on representation. In addition, lawyers should be open to finding assistance to understand the cultural issues. A lawyer who approaches all clients with humility likely will be more successful in gathering information that is relevant to cultural issues. A lawyer who researches potential cultural issues both in the literature and in the community context and who takes the time to learn about the client as an individual and not simply as a member of a cultural or ethnic group will be more successful as well. The lawyer should focus on listening carefully to the client. Finally, the lawyer should communicate with the client (or use others to assist in communication) so that the client understands the full picture of the issues as affected by the legal system. This quest, like the practice of law, is lifelong. However, a clinical experience as a law student with a supervisor who uses supervision sessions to help the student progress in the cognitive, affective, and skills-based areas will be very valuable.

Faculty members teaching in clinics have a rich opportunity to use case supervision as a vehicle for helping students develop useful knowledge, attitude, and skills in working with clients from different cultures. This work is challenging, but it is an endeavor rich with possibilities for learning. Moreover, developing effective cross-cultural contextual knowledge, self-awareness, and intercultural communication skills among law students can have broader implications for our increasingly complex world.